

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

DAVIDSON HOTEL COMPANY,  
LLC (CHICAGO MARRIOTT AT  
MEDICAL DISTRICT/UIC)

Petitioner,

v.

NATIONAL LABOR RELATIONS  
BOARD,

Respondent.

Case No. 19-1235

**PETITION FOR REVIEW**

Davidson Hotel Company, LLC (Chicago Marriott at Medical District/UIC) (“Davidson”) pursuant to Federal Rule of Appellate Procedure 15(a) and 29 U.S.C. § 160(f), petitions the United States Court of Appeals for the District of Columbia Circuit for review of the Order of the Respondent National Labor Relations Board in NLRB Case 13-CA-229523, entered on November 6, 2019, and titled “Decision and Order in Davidson Hotel Company, LLC (Chicago Marriott at Medical District/UIC) and UNITE HERE, Local 1.” A copy of the Order is included as Attachment A with this Petition for Review.

Dated: November 11, 2019

Respectfully submitted,

/s/ Mark W. DeLaquil

MARK W. DELAQUIL

BAKER & HOSTETLER LLP

1050 Connecticut Avenue NW

Suite 1100

Washington, DC 20036

Tel: (202) 861-1527

Fax: (202) 861-1783

Email: mdelaquil@bakerlaw.com

*Counsel for Davidson Hotel Company,  
LLC*

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**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, Petitioner Davidson Hotel Company, LLC (Chicago Marriott at Medical District/UIC) (“Davidson”) hereby states that it is a limited liability company engaged in the business of hotel management. Davidson has no parent company, and no publicly traded entity owns 10% or more of Davidson’s stock. Davidson was formed in the State of Delaware and is qualified to do business in all of the states where it operates hotels. The sole member of Davidson’s limited liability company is Monroe DHH Holdings, LLC, which is also a limited liability company formed in Delaware.

Dated: November 11, 2019

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BAKER & HOSTETLER LLP

1050 Connecticut Avenue NW

Suite 1100

Washington, DC 20036

Tel: (202) 861-1527

Fax: (202) 861-1783

Email: [mdelaquil@bakerlaw.com](mailto:mdelaquil@bakerlaw.com)

*Counsel for Davidson Hotel Company,  
LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Petition for Review and Corporate Disclosure Statement will be served this day by United States first-class mail upon the following:

David Habenstreit  
Acting Deputy Associate General  
Counsel  
National Labor Relations Board  
1015 Half Street SE  
Washington, D.C. 20570-0001

Peter Sung Ohr  
Regional Director  
National Labor Relations Board  
Region 13  
Dirksen Federal Building  
219 South Dearborn Street  
Suite 808  
Chicago, IL 60604-2027

David Barber  
McCracken, Stemerman &  
Holsberry, LLP  
595 Market St., Suite 800  
San Francisco, CA 94105

Angel Castillo  
UNITE HERE Local 1  
218 S. Wabash Suite 700  
Chicago, IL 60604

Dated: November 11, 2019

Respectfully submitted,

/s/ Mark W. DeLaquil  
MARK W. DELAQUIL  
BAKER & HOSTETLER LLP  
1050 Connecticut Avenue NW  
Suite 1100  
Washington, DC 20036  
Tel: (202) 861-1527  
Fax: (202) 861-1783  
Email: mdelaquil@bakerlaw.com

*Counsel for Davidson Hotel Company,  
LLC*

# Attachment A

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

**Davidson Hotel Company, LLC (Chicago Marriott at Medical District/UIC) and UNITE HERE, Local 1.** Case 13–CA–229523

November 6, 2019

DECISION AND ORDER

BY MEMBERS MCFERRAN, KAPLAN, AND EMANUEL

This is a refusal-to-bargain case in which the Respondent, Davidson Hotel Company LLC (Chicago Marriott at Medical District/UIC), is contesting the Union's certification as bargaining representative in the underlying representation proceedings. Pursuant to a charge filed by UNITE HERE, Local 1 (the Union) on October 19, 2018, the General Counsel issued a complaint on June 26, 2019, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing to recognize and bargain with the Union following the Union's certifications in Cases 13–RC–217485 and 13–RC–217487. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On July 18, 2019, the General Counsel filed a Motion for Summary Judgment. On July 24, 2019, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be

granted. The Respondent filed an Opposition to the Motion for Summary Judgment.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.<sup>1</sup>

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the Union's certifications based on contentions that were raised and rejected in the underlying representation proceeding.<sup>2</sup> In its Opposition, the Respondent reiterates the arguments previously made in the representation hearing, contending that they constitute special circumstances requiring the Board to depart from its typical practice and consider arguments previously made in the representation case proceedings.<sup>3</sup>

We reject the Respondent's argument that this case presents special circumstances. All representation issues raised by the Respondent were or could have been litigated in the prior representation proceedings. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceedings. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.<sup>4</sup>

On the entire record, the Board makes the following

<sup>1</sup> Chairman Ring took no part in the consideration of this case.

<sup>2</sup> The Respondent's answer denies the complaint allegations that the bargaining units are appropriate, that the Union is the properly certified exclusive collective-bargaining representative of the employees in the units, and that the Respondent's refusal to bargain with the Union violates Sec. 8(a)(5) and (1). The Respondent also denies knowledge of whether the Union filed the charge in this proceeding, although it admits that it received the charge. In addition, the Respondent asserts as affirmative defenses that: (1) the units improperly include supervisory employees; (2) the petition for representation violates the petition-bar rule; (3) laboratory conditions were destroyed by improper acts by union representatives and agents; and (4) the units were improper under the community of interest standard in *PCC Structural, Inc.*, 365 NLRB No. 160 (2017). These issues were fully litigated and resolved in the underlying representation proceeding and therefore do not raise any litigable issues in this proceeding. See *Voices for Int'l Bus. & Educ., Inc. d/b/a Int'l High Sch. of New Orleans*, 365 NLRB No. 66, slip op. at 1 fn. 1 (2017), enf'd. 905 F.3d 770 (5th Cir. 2018); see also *STP Nuclear Operating Co.*, 367 NLRB No. 102, slip op. at 1 fn. 1 (2019). Finally, the Respondent asserts that the complaint fails to state a claim upon which relief can be granted, and that the complaint is vague and therefore the Respondent has been denied due process. The Respondent has not offered any explanation or evidence to support these bare assertions. Thus, we find that these affirmative defenses do not preclude summary judgment in this

proceeding. See, e.g., *George Washington Univ.*, 346 NLRB 155, 155 fn. 2 (2005), enf'd. 2006 WL 4539237 (D.C. Cir. 2006); *Circus Circus Hotel*, 316 NLRB 1235, 1235 fn. 1 (1995).

<sup>3</sup> On September 30, 2019, the Respondent filed a notice of supplemental authority, pursuant to Rule 102.6, asserting that the Board's decision in *Boeing Co.*, 368 NLRB No. 67 (2019), supports its position that the petitioned-for units are inappropriate and that a single unit combining the Food & Beverage employees (F&B) and the Housekeeping employees would be more appropriate. The General Counsel responded on October 10, 2019, denying that the *Boeing* decision affects the outcome of this case. We find no merit in the Respondent's contention that *Boeing* requires a fresh analysis of the previously litigated unit-appropriateness issues.

<sup>4</sup> The Respondent's request that the complaint be dismissed is therefore denied. Member Emanuel dissented from the Board's order denying review in the underlying representation proceeding. Member Emanuel would have granted review, finding that the Employer raised a substantial issue as to the appropriateness of the petitioned-for separate housekeeping and F&B units, consistent with *PCC Structural, Inc.*, 365 NLRB No. 160 (2017), and *The Boeing Co.*, supra. While he remains of that view, Member Emanuel agrees that Respondent has not presented any new matters that are properly litigable in this unfair labor practice proceeding and would grant the motion for summary judgment on this basis.

## FINDINGS OF FACT

## I. JURISDICTION

At all material times, the Respondent, Davidson Hotel Company LLC (Chicago Marriott at Medical District/UIC), an Illinois corporation, with an office and place of business in Chicago, Illinois, has been engaged in the business of providing hotel services. During the calendar year preceding issuance of the complaint, a representative period, Respondent derived gross revenues in excess of \$500,000. During this same period of time, the Respondent derived more than \$50,000<sup>5</sup> in gross revenue from sales or performance of services directly to customers outside the State of Illinois.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union, UNITE HERE Local 1, is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following representation elections held on May 2, 2018 in case 13–RC–217485 (housekeeping unit) and case 13–RC–217487 (food and beverage unit), the Union was certified on August 28, 2018, as the exclusive collective-bargaining representative of the employees in the following appropriate units:

## Housekeeping Unit:

All regular part-time and full-time housekeeping employees (including room attendants, housekeeping supervisors, laundry attendants, and house persons) employed by Davidson Hotel Company, LLC (Chicago Marriott at Medical District/UIC) located at 625 S. Ashland, Chicago, Illinois facility; excluding all other employees, valet employees, engineering employees, food and beverage employees, front desk department employees, guards, managers, and supervisors as defined in the Act.

## Food and Beverage Unit:

All regular part-time and full-time food and beverage employees including dishwashers, cooks, outlet servers, room service servers, banquet servers, banquet captains, bartenders, and lounge attendants employed by Davidson Hotel Company, LLC (Chicago Marriott at Medical District/UIC) at its facility located at 625 S.

Ashland, Chicago, Illinois; excluding all other employees, valet employees, engineering employees, housekeeping employees, front desk department employees, guards, managers, and supervisors as defined in the Act.

On June 5, 2019, the Board denied the Respondent's request for review of the Union's certification in Cases 13–RC–217485 and 13–RC–217487. The Union continues to be the exclusive collective-bargaining representative of the employees in the above appropriate units under Section 9(a) of the Act.

B. *Refusal to Bargain*

By email dated June 12, 2019, the Union requested that the Respondent bargain collectively with it as the exclusive collective-bargaining representative of the employees in the two units. In a letter dated June 19, 2019, the Respondent informed the Union that it would not recognize and bargain with the Union in either the housekeeping or food and beverage units. Since that date, the Respondent has failed and refused to recognize and bargain with the Union.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

## CONCLUSION OF LAW

By failing and refusing since June 19, 2019, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate units, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962),

<sup>5</sup> The complaint (par. 2(b)) contained an apparent typographical error, alleging that the Respondent derived \$5000 in gross revenue from out of state. We correct the error. We further note that the Respondent admits

that, at all material times, it has been an employer engaged in commerce within the meaning of the Act.



DAVIDSON HOTEL COMPANY, LLC (CHICAGO MARRIOTT AT MEDICAL DISTRICT/UIC)

3

enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

### ORDER

The National Labor Relations Board orders that the Respondent, Davidson Hotel Company LLC (Chicago Marriott at Medical District/UIC), Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with UNITE HERE Local 1 as the exclusive collective-bargaining representative of the employees in the housekeeping and food and beverage bargaining units.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate units on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Housekeeping Unit:

All regular part-time and full-time housekeeping employees (including room attendants, housekeeping supervisors, laundry attendants, and house persons) employed by Davidson Hotel Company, LLC (Chicago Marriott at Medical District/UIC) located at 625 S. Ashland, Chicago, Illinois facility; excluding all other employees, valet employees, engineering employees, food and beverage employees, front desk department employees, guards, managers, and supervisors as defined in the Act.

Food and Beverage Unit:

All regular part-time and full-time food and beverage employees including dishwashers, cooks, outlet servers, room service servers, banquet servers, banquet captains, bartenders, and lounge attendants employed by Davidson Hotel Company, LLC (Chicago Marriott at Medical District/UIC) at its facility located at located at 625 S. Ashland, Chicago, Illinois; excluding all other employees, valet employees, engineering employees, housekeeping employees, front desk department

employees, guards, managers, and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Chicago, Illinois, copies of the attached notice marked "Appendix."<sup>6</sup> Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 19, 2019.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 6, 2019

Lauren McFerran, Member

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>6</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the

United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

## FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with UNITE HERE Local 1 (the Union) as the exclusive collective-bargaining representative of our employees in the housekeeping and food and beverage bargaining units.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining units:

## Housekeeping Unit:

All regular part-time and full-time housekeeping employees (including room attendants, housekeeping supervisors, laundry attendants, and house persons) employed by us at our 625 S. Ashland, Chicago, Illinois

facility; excluding all other employees, valet employees, engineering employees, food and beverage employees, front desk department employees, guards, managers, and supervisors as defined in the Act.

## Food and Beverage Unit:

All regular part-time and full-time food and beverage employees including dishwashers, cooks, outlet servers, room service servers, banquet servers, banquet captains, bartenders, and lounge attendants employed by us at our facility located at 625 S. Ashland, Chicago, Illinois; excluding all other employees, valet employees, engineering employees, housekeeping employees, front desk department employees, guards, managers, and supervisors as defined in the Act.

DAVIDSON HOTEL COMPANY LLC (CHICAGO  
MARRIOTT AT MEDICAL DISTRICT/UIC)

The Board's decision can be found at [www.nlr.gov/case/13-CA-229523](http://www.nlr.gov/case/13-CA-229523) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

